

IN THE MATTER OF the investigation)	UTILITY DIVISION
Of the practices and charges made)	
For the obtaining of water service)	DOCKET NO. 3649
From the Hungry Horse Water Company)	ORDER NO. 2040
and the Martin City Water Department in the)	
Hungry Horse – Martin city Vicinity.)	

APPEARANCE

Edwin S. Booth, Secretary-Counsel, appearing for the Board.

BY THE COMMISSION:

This proceeding was initiated on the Commission's initiative to investigate the facts concerning the practices being followed by the Hungry Horse Water Company and the Martin City Water Department in permitting connection with their water systems. At the time of hearing, evidence was offered as to the practices being followed. Protests were offered on behalf of the Hungry Horse Builders, a voluntary association of persons residing in Hungry Horse, Montana, and others.

From the evidence, it appears that the Hungry Horse Water Company, a corporation, was organized to furnish water to a portion of Hungry Horse and the Martin City Water Department, a partnership, was organized to furnish water to Martin City. Both are private undertakings. The Bureau of Reclamation of the government of the United States is constructing a dam on the Flathead River in Flathead County, Montana. Construction has been commenced and is now proceeding under various contracts. The dam is located some distance from the established towns and cities and to house the employees and furnish community services to them, several towns or villages have come into existence. The towns of Hungry Horse and Martin City located near the construction works came into existence solely by reason of the dam. There is a government town on the project proper. Except for the government town, there is no reason to believe that any of the towns will continue to exist after construction of the dam is completed. While the exact time required to construct the dam cannot be definitely stated, it is believed that the construction will not require more than about six years.

Neither water company has any existing contracts with property owners to pay any sums for the privilege of connecting with the system. The Hungry Horse Water Company has been collecting \$23.00 for residences and \$50.00 for business connections on the system. This charge has apparently been termed a gift or voluntary payment but has actually been collected from each party connected. The Company also makes certain charges for labor and fittings in connection with the tapping of the main. The Martin City water Department has been collecting a tapping fee of \$15.00 per connection, which includes all costs of tapping the main.

The Hungry Horse Water Company was organized in April 21948 and commenced the installation of a water system. The system did not commence furnishing service until the fall of October 1948. The rates of the company were submitted for approval on September 30, 1948, and were approved on October 11, 1948. The system installed, at a cost of about \$35,000.00, consists of a dam and gravity system with 17,000 feet of mains. It is contemplated tat a reservoir and other improvements will be made. About 400.00 has been collected as a tapping charge, irrespective of what it has been called. The company has about 50 customers at the present time, all of which have agreed to pay the above-mentioned tapping charge.

The Martin City Water Department is a private enterprise for furnishing water service in Martin City, Montana. It has collected a tapping fee or \$15.00 from all customers. The tariffs of the company were approved by the commission of August 21, 1947. A Representative of the Martin City Chamber of commerce and Lions Club testified they believed the fee was reasonable and justified.

Each of the companies testified that their rates were made in contemplation that the fees mentioned would be paid. If such payments are made, it is believed that the systems will be financial success. If such payments are not received, the rates would have to be increased if the systems were to succeed. Neither of the companies at present have any rule in their tariffs which provide for such payments. Both of them asks that such special rules be approved and made applicable. They state that the fees now charged are fair and reasonable considering the service furnishes and the conditions of the individual systems. It is further contended that such a charge is necessary in order to permit installation of the system, pay operating expenses, retire the capital and earn a reasonable return on the investment, considering the potential volume of business and the short life expectancy of the community.

The Protestants, by cross examination attempted to prove that sufficient to retire the capital. The Commission ruled that such future business was too speculative to be

considered. The Protestants claimed that the Hungry Horse Water Company should not be allowed to collect the tapping fee as it constituted the illegal furnishing of capital by the patrons.

Under the provisions of Section 3881 R.C.M. 1935 any person, firm or corporation furnishing water for domestic or commercial purpose is a public utility. The rates, charges and practices of such utilities are under the jurisdiction of this commission. The Hungry Horse Water Company became a utility on September 30, 1948 and the Martin city Water Department became a utility on August 21, 1947.

Section 3892 R.C.M., 1935, provides that a utility may not charge or receive any rates different than those approved by the Public Service Commission. The rates filed by both companies and approved by the commission provide for flat rate schedule for water furnished. The schedules do not provide for any special rates or charges for tapping, connection or application for service. The primary question presented to the commission is whether a tapping fee should be authorized as a condition precedent to the furnishing of service.

This Commission in Order No. 131, Docket No. 4777, dated August 7, 1915, reviewed the general practices of water utilities. In that Order the commission held that,

“the utility should furnish and install at its own expense the necessary connection with the main, beyond which point the expense devolves upon the consumer; not at an arbitrary figure for the material furnished by the utility, but at the actual cost.

It is perhaps needless to say that the commission disapproves the practice of making a charge for the privilege of tapping the main where it is not shown; that such charge represents either labor or material or both.”

The provisions of this Order were incorporated in the general rules relating to water a service effective April 1, 1916. These rules are still in full force and effect. Rule G-2 provides, in part,

“ The company at its own expense will tap the main and furnish corporation cock, clamp when necessary and any other material used on labor furnished in connection with the tapping of the main. Full expense of saying and maintains the service pipes from the mains to the consumers premiscs must be born by the consumer. A curb cock of approved pattern with a cost iron curb box must be installed by the consumer at a point designated by the company.”

This is a general rule approved and applicable in this state. The question as to practice on such matter in other states is not therefore of importance in this matter. No tapping charge, whether fixed by contract or tariff regulation may be made unless conditions warrant on exception to this genera rule.

The general rule was adopted in connection with municipal and private water systems located in communities and cities which had every reason to continue in existence for an indeterminate period of time. The municipal systems were installed by revenue received from bond issues and repayable from revenue derived from taxation or from the revenue of the system. The private systems were installed because private capital considered the life of the system would be sufficient to earn fair return on the investment and retire the capitol structure; thus invested. In either event the expectancy of the system must be sufficiently good to warrant the investment of capital. Under such conditions the general rue above mentioned has proven adequate, fair and reasonable.

In the present case no reason other than the construction of the dam by federal authority accounts for the existence of a town at Hungry Horse, Montana. When the construction of the dam is completed there can be no expectation for the town to continue to exist. The dam should be completed in a matter of six or seven years. The potential

volume of business is speculative and uncertain when the dam is completed, in order to justify the installation of the water system, the depreciation charged off annually plus the salvage value should equal the capital investment. The income should have been sufficient to pay all operation expenses and a fair return in the capital investment. Considering the circumstances existing it appears there is ample justification for modifying the general rule and permitting and requiring further payments to help defray the cost of installation.

Each of the companies have charged and collected money as a tapping charge to help defray costs of installation. These amounts and any amounts received, which do not represent payment for service on water furnished, should be carried in a separate account as contributions. It should be included as capital investment and the value of the system should be reduced by the amount of such contributions. The companies are not entitled to earn a return on such contributed capital or retire the value of it by depreciation or salvage SEC: Re: Jamaica Water Supply Co., (Wis) 12 P.U.R. (N.S.) 405.

From the evidence it is apparent that the systems were installed and the rates fixed on the basis of collecting the tapping fees. Were we now to disapprove the fees and require return of such payments, the companies would be placed in a position to lose their entire investment and the people of the area would stand to lose the availability of a water system or they would be required to raise their rates.

We, this date, approved a tapping fee of \$50.00 for the Hungry Horse Water Works, the only other company furnishing water service in the area involved. (Stewart vs. Williams, Docket No. 3648, Order No. 2036.)

The two companies have different potential volumes of business different operating conditions. Each of them have fixed the fees in connection with their own conditions. Considering the service rendered and the conditions existing it appears that the tapping fees as now charged should be approved. The fee will include all cost of tapping of the main, but expenses from the mains to the consumer's premise will be an

expense of the consumer. Necessary adjustments in rates consistent with public convenience by have to be made if the conditions warrant.

From the evidence and for the reasons stated, the Board makes the following:

Findings of Fact

1. That the Hungry Horse Water Company and the Martin City Water Department are private enterprises engaged in the public utility business of supplying water to residents of a portion of hungry Horse and martin City, respectively.
2. That Hungry Horse and Martin City are town constructed on private land for the purpose of housing and caring for persons employed on the dam being built by the United States Government, near that point and that after the completion of the dam, which will require about six years, no reason exists to expect the town to continue.
3. That each of the companies have collocated a tapping charge as referred to above and that such charge is necessary to permit continued operation of the company.

Conclusions of Law

The Board concludes as a matter of law that each of the companies should be granted permission to make immediately effective tariffs providing for tapping fees as above referred to.

ORDER

NOW, THEREFORE, at a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, Helena, Montana, on December 7, 1948, there being present Chairman Horace F. Casey, Commissioner Paul T. Smith and Commissioner Leonard C. Young, there regularly came before the Board for action, the matters and things involved in docket No. 3649, and the Board now being fully advised in the premises:

IT IS THEREFORE ORDERED that a special tariff regulation be made immediately effective providing for a tapping fee for the Hungry Horse Water company of \$25.00 on residences connections and \$50.00 on business connections and for the Martin City Water Department of \$15.00 such regulation reading as follows:

“ A tapping fee of _____ shall be paid by each applicant for service, except as herein modified. General regulation G-2 applies.”

IT IS FURTHER ORDERED that a full, true and correct copy of this Order be served forthwith on the parties hereto and their Attorney by first Class United States mail.

The foregoing order was unanimously adopted by the Public Service Commission of the State of Montana.

DONE in open session at Helena, Montana, this 7th day of December, 1948.

HORACE F. CASEY, Chairman

PAUL T. SMITH, Commissioner

LEONARD C. YOUNG, Commissioner

ATTEST:

EDWIN S. BOOTH
Secretary Counsel
(Official Seal)